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BEFORE THE

# Federal Communications Commission

ORIGINAL  
FILE

In the Matter of

ADVANCED TELEVISION SYSTEMS  
AND THEIR IMPACT UPON THE  
EXISTING BROADCAST SERVICE

MM Docket No. 87-268

To: The Commission

## COMMENTS OF GOLDEN ORANGE BROADCASTING CO., INC. TO FURTHER NOTICE OF PROPOSED RULE MAKING

Golden Orange Broadcasting Co., Inc. (Golden Orange), licensee of independent UHF television broadcast station KDOC-TV, Anaheim, California, hereby submits its comments to the Commission's Second Report and Order/Further Notice of Proposed Rule Making (FCC 92-174), released May 8, 1992 (the "Decision"), in the above-captioned matter regarding implementation of advanced television (ATV) service. In support thereof, the following is set forth.

1. ATV Eligibility, Allotment and Assignment Policies. The Commission has decided to pair an ATV channel assignment with each existing television channel allotment and to impose a "use or lose" ATV application/construction deadline for initial ATV channel allotments and assignments; eligibility for such ATV channel allotments will initially be restricted to existing full service television licensees, permittees and construction permit applicants. The Commission, however, will not propose a specific pairing of ATV channels with current television channels, leaving

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such details to be worked out among market stations based on the particular facts and considerations unique to each market.

2. In the event of insufficient ATV frequency spectrum to accommodate all current television licensees, permittees and applicants, the Commission seeks comments as to what method or criteria it should use to determine which applicants would receive an ATV channel assignment. If there are insufficient ATV channels for a particular market, or if broadcasters are unable to agree on an ATV channel pairing plan for a market, the Commission proposes to assign ATV channels in those markets on a first-come, first-served basis with some provision for ranking simultaneously-filed applications.

3. Golden Orange is part of the Los Angeles television market; in terms of ADI television households, Los Angeles is the second largest market in the country and in terms of ADI TV stations it is the largest market in the country. Without benefit of the Commission's draft table of ATV allotments, which is scheduled to be adopted later this month and released some time in August, there will almost surely be an insufficient number of ATV channels to accommodate all existing Los Angeles market television stations; indeed, even if all existing UHF taboos were eliminated, Golden Orange believes that the largest number of ATV channels which could be allocated to the Los Angeles television market would be 12 channels, whereas there are 26 television stations in the market, leaving a shortfall in ATV channel allocations of more than

50 percent. Under a shortfall situation of that magnitude, it is simply inadequate for the Commission to propose that market area stations attempt to resolve the situation among themselves and, in the absence of a resolution, assign ATV allocations on a first-come, first-serve basis.

4. Golden Orange submits that in situations where there is insufficient ATV spectrum to accommodate all existing television stations and permittees, the Commission adopt the following principles in order to accommodate all television licensees and permittees desiring to transition to the ATV service:

- (a) All existing stations should have equal access to the ATV conversion process, without reliance upon any Darwinian selection process, such as first-to-file, audience share or any other selection criteria.
- (b) All existing stations ought to have the right to continue to serve the public in their communities of license without fear of going dark simply because a simulcast ATV channel is not available.
- (c) All existing stations ought to be reasonably protected from interference from new ATV channels within their communities of license.
- (d) All existing stations which are unable to take advantage of an ATV channel allotment, either because of insufficient ATV channels or insufficient financial resources, be given an opportunity to convert to ATV on their

existing channel by the final ATV conversion date established by the Commission.

5. Moreover, in ATV channel shortfall situations, rather than leave it up to competing market stations to resolve a situation which is inherently incapable of resolution, the Commission should appoint an independent mediator in furtherance of its policy to support and encourage the use of alternative dispute resolution procedures (see Section 1.18 of the Commission's rules). Such mediators could determine which market stations would be given available ATV channels and which stations would be given an opportunity to convert to ATV service on their existing (or some other) television channel at some point during the ATV conversion process.

6. Simulcasting. The Commission has determined that it will require 100 percent simulcasting of the programming on the ATV channel at the earliest appropriate time and has proposed that this 100 percent simulcast requirement be adopted no later than 4 years after the initial ATV application/construction period has passed. The Commission seeks comment on whether simulcasting should be phased-in sooner, for example, by requiring 50 percent simulcasting 2 years after the initial ATV application/construction period has passed and moving to 100 percent simulcasting 2 years later.

7. The Commission believes that a simulcasting requirement is necessary to insure that consumers are not prematurely deprived of the benefits of their existing television receivers and to

facilitate recapture of the NTSC reversion channel as soon as possible by minimizing broadcaster and consumer reliance on the ATV channel as a separate program service. However, the Commission has indicated a willingness to consider some flexibility with respect to the particulars of a simulcast requirement, such as broadly defining simulcast programs as being those broadcast within the same 24-hour period and not at the exact same time.

8. Golden Orange submits that a general simulcast requirement is neither practicable nor advisable. For example, whereas network affiliate stations should be expected, even required, to simulcast high definition network programming which can be passed through on the ATV channel and down-converted on the NTSC channel, independent stations should be given greater latitude and flexibility to experiment with local, live high definition programming on the ATV channel while separately programming the NTSC channel. Independent UHF stations, such as KDOC-TV, typically are at a competitive disadvantage vis a vis network stations and independent VHF stations in purchasing programming; usually an independent UHF station only has access to substantial amounts of television programming long after such programming has been presented by network stations and independent VHF stations. Accordingly, Station KDOC-TV expects that it will have to originate its own high definition programming.

9. Unless a station has access to high definition programming, there is no merit to imposing arbitrary simulcast requirements. Television programming which does not have a high resolution picture quality will not be enhanced or improved through a process of digital up-conversion for transmission on the ATV channel. Thus, where a station provides low or medium resolution programming on the NTSC channel, it should be given maximum flexibility to experiment with local, live high definition programming on the ATV channel without regard to arbitrary simulcast requirements.

10. Golden Orange submits that the public would best be served by merely requiring that any high resolution programming broadcast on the ATV channel be made available to the public on current television channels within 24 hours of broadcast. Such a simulcast requirement would ensure that the public receives the benefits of high definition television programming while permitting stations maximum latitude to experiment with and develop local, high definition programming for its ATV channel.

#### Conclusion

As the Commission's Decision recognizes, there are many unresolved issues with respect to the implementation of ATV service. One certainty, however, is that the transition to ATV service will involve substantial capital expenditures and corresponding financial risk for the television industry. As with the implementation of any new technology and service, the dynamics

of the implementation process can be expected to be uncertain and affected by variable considerations in each particular television market. In establishing a framework for implementation of ATV service, Golden Orange urges that the Commission provide maximum flexibility for stations to work out the details of their own transition, recognizing that marketplace limitations and constraints cannot be overcome simply by force of regulation.

Respectfully submitted

GOLDEN ORANGE BROADCASTING  
CO., INC.

By Calvin C. Brack  
Calvin C. Brack  
Secretary-Treasurer

Date: July 16, 1992